

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC" MUMBAI**

**BEFORE SHRI SAKTIJIT DEY (JUDICIAL MEMBER) AND
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 5825/MUM/2018
Assessment Year: 2007-08**

Lalit Kumar Dwarkaprasad
Surekha,
303, Rajendra Apartments,
Opp. Adarsh Park, Near
ShivajiChowk, Bhiwandi-
421302 (Dist. : Thane)
PAN No. ACKPS4185L
Appellant

Income Tax Officer, Ward 1(2),
Vs. Kalyan Mohan Plaza, 1st floor,
Wayle Nagar, KhadakPada,
Kalyan (W), -421301.

Respondent

Assessee by : Mr. Ambalal Jain, AR
Revenue by : Mr. Bhera Ram, DR

Date of Hearing : 21/11/2019
Date of pronouncement : 27/12/2019

ORDER

PER N.K. PRADHAN, A.M.

This is an appeal filed by the assessee. The relevant assessment year is 2007-08. The appeal is directed against the order of the Commissioner of Income Tax (Appeals)-2, Pune [in short 'CIT(A)'] and arises out of the assessment completed u/s 143(3) r.w.s. 147 of the Income Tax Act 1961, (the 'Act').

2. The grounds of appeal filed by the assessee read as under :

1. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in confirming the addition of Rs.7,00,000 as unexplained cash credit u/s.68 for the

unsecured loan taken from M/s. Kunal Gems Prop. Ashok Soni on the information received from DGIT (Inv.J, Mumbai in the case of Pravin Kumar Jain.

2. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in confirming the loan of Rs.7,00,000 as accommodation entry merely on the basis of statement of Pravin Kumar Jain recorded by DGIT, (Inv.), Mumbai without providing the copy of such statement and the cross examination of Pravin Kumar Jain to the appellant thus violating the principles of natural justice.
3. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in confirming an addition of Rs.1,30,783 on account of interest paid on unsecured loans considered as unexplained cash credit u/s.68 taken from M/s. Kunal Gem (Proprietor: Ashok Soni) based on information received from DGIT (Inv) in the case of Praveen Kumar Jain.

3. Briefly stated, the facts of the case are that the assessee filed his return of income for the assessment year (AY) 2007-08 on 31.08.2007 declaring Nil income. Assessment u/s 143(3) was completed on 09.12.2009 assessing the income at Rs.38,950/- by making addition of Rs.50,000/- on account of low drawings and Rs.15,000/- by disallowing expenses. The Assessing Officer (AO) found that a search and seizure action in the case of Shri Pravin Kumar Jain Group was carried out on 01.10.2013 by the Income Tax Department and during the course of search it was found that Shri Jain was providing accommodation entries like bogus purchases, sales, unsecured loans, share capital etc. As per the information received from the Director General of Income Tax, Mumbai (DGIT), the name of the assessee also appears in the list of persons who have obtained bogus loans from the concerns controlled and managed by Shri Jain. The details are as under:

Name of the concern	Date of transaction	Amount involved	Name of Bank through which transaction made	Bank / Branch	Bank a/c. no.
Kunal Gems	04.04.2006	7,00,000	Canara Bank	Khetwadi Branch, Mumbai	12129
Kunal Gems	09.01.2007	9,00,000	Axis Bank	New Marine Line Br. Mumbai	233010200013148

In view of the above information, the AO issued notice u/s 148 dated 28.03.2014 to the assessee. He also provided to the assessee the reasons for issue of the above notice. In response to it, it was submitted by the assessee before the AO that the return of income filed on 31.08.2007 be treated as income filed in response to notice u/s 148 of the Act. The assessment u/s 143(3) was completed on 09.12.2009.

During the course of reassessment proceedings, the AO called for information from Shri Pravin Kumar Jain (Prop. M/s Vanguard Jewels Ltd.) requesting to furnish the account extracts of the assessee for the period 01.04.2006 to 31.03.2007. However, the letter was returned un-served by the postal authorities on 20.02.2015. Thereafter, the AO issued summons dated 23.02.2015 to Shri Jain, but there was no compliance.

In view of the above facts, the AO made an addition of Rs.16,00,000/-.

4. Aggrieved by the order of the AO, the assessee filed an appeal before the Ld. CIT(A). During the course of appellate proceedings, the assessee filed a petition for admission of additional evidence. Considering it, the Ld. CIT(A)

forwarded a copy of it to the AO along with the documents enclosed therein for submitting a remand report after carrying out necessary verification. After receipt of the remand report dated 22.06.2017, the Ld CIT(A) forwarded a copy to the assessee for his counter comments, if any. The assessee filed his counter comment. The remand report submitted by the AO and the counter comment by the assessee have been extracted by the Ld. CIT(A) in his order dated 16.08.2018. Having gone through the above, the Ld. CIT(A) observed that (i) in this case there was specific information from the Investigation Wing regarding procurement of accommodation entries by the assessee from M/s Kunal Gems, an entity controlled and managed by Shri Pravin Kumar Jain, (ii) during the course of assessment proceedings, the AO issued notice u/s 133(6) to Shri Jain to verify the genuineness of the transaction; but the same came back un-served by the postal authorities, (iii) subsequently, the AO issued summons to Shri Jain but it also made the same fate, (iv) thereafter, the inquiry conducted by the Inspector of Income Tax could not verify the creditor, (v) during the remand proceedings, a letter sent by the AO to M/s Kunal Gems was returned by the postal authorities with remarks 'not known', (vi) the Inspector also reported that no person in the name of Mr. Ashok Soni, the Prop. of M/s Kunal Gems was staying there.

Observing that no further evidence against the above findings were filed by the assessee during the course of appellate proceedings, the Ld. CIT(A) affirmed the loans of Rs.7,00,000/- obtained by the assessee from M/s Kunal Gems on the reason that as per the remand report filed by the AO loan of Rs.6,00,000/- was shown as outstanding on 01.04.2006, whereas loan of Rs.7,00,000/- was taken during the year on 08.04.2006 while Rs.9,00,000/-

was repaid during the year. Thus he deleted the addition of Rs.9,00,000/- made by the AO. Since the AO in the remand report has mentioned that an amount of Rs.1,30,783/- was claimed as interest from the above loan of Rs.7,00,000/-, the Ld. CIT(A) directed the AO to disallow the interest of Rs.1,30,778/- on the loan taken from M/s Kunal Gems.

5. Before us, the Ld. counsel for the assessee files a *Paper Book (P/B)* containing (i) ledger A/c of Kunal Gems (Prop.: Ashok R. Verma) as on 31.03.2007 from the books of M/s Vinni Textile Mills (Prop. Lalit Kumar D. Surekha), (ii) ledger A/c of Kunal Gems (Prop.: Ashok R. Verma) as on 31.03.2008 from the books of M/s Vinni Textile Mills (Prop. Lalit Kumar D. Surekha), (iii) Bank Statement of Current A/c No. 2163, Bank of India, A/c Holder Vinni Textile Mills (Prop. Lalit Kumar D. Surekha) appellant, (iv) loan confirmation letters dated 16.08.2014 from lender Kunal Gems (Prop.: Ashok R. Verma) for AY 2006-07 & 2007-08, (v) Bank Statement of – Canara Bank – OD A/c No. 12129 – A/c Holder Kunal Gems (lender) (Prop.: Ashok R. Verma), (vi) copy of return & tax audit report u/s 44AB, ITR of lender : Kunal Gems Prop. Ashok Ratanlal Verma for AY 2007-08.

The Ld. counsel submits that the above documents were filed before the AO and CIT(A). Relying on the order of the Tribunal dated 03.05.2019 in the case of *M/s Shree Laxmi Estate Pvt. Ltd. v. ITO* (ITA No. 6557/Mum/2017) for AY 2013-14, the Ld. counsel states that facts being similar the addition of Rs.7,00,000/- and Rs.1,30,783/- sustained by the CIT(A) be deleted.

6. On the other hand, the Ld. Departmental Representative (DR) submits that in the present case there was a specific information from the

Investigation Wing of the Department that the assessee had obtained accommodation entries from M/s Kunal Gems, an entity controlled and managed by Shri Pravin Kumar Jain. During the course of assessment proceedings, the AO had issued notice u/s 133(6) to Shri Jain for verifying the transaction but the same came back un-served by the postal authorities. Subsequently, the AO issued summons to Shri Jain but there was no response. The Inspector deputed by the AO to conduct an inquiry submitted a report that no person in the name of Mr. Ashok Soni, the Prop. of M/s Kunal Gems was staying in the address given by the assessee. In such a situation, the Ld. DR submits that the CIT(A) has rightly sustained the addition of Rs.7,00,000/- made by the AO. Similarly, the CIT(A) has rightly directed the AO to bring to tax the interest on said loan of Rs.1,30,783/-. Therefore, it is submitted by the Ld. DR that the order of CIT(A) be affirmed.

7. We have heard the rival submissions and perused the relevant materials on record. The reasons for our decisions are given below.

In the decision in *M/s Shree Laxmi Estate Pvt. Ltd.* (supra) relied on by the Ld. counsel, the notices u/s 133(6) issued by the AO to the loan creditors were duly complied by filing the requisite details ; Mr. Nitin Mahavir Prasad Jogad, Prop. of M/s Nayan Gems also replied to the notice u/s 133(6), wherein he had confirmed that he had given loan to the assessee.

In the instant case, we find that the notice issued by the AO u/s 133(6) to Shri Pravin Kumar Jain was returned un-served by the postal authorities. Then the summons issued by the AO u/s 131 of the Act met the same fate. During the course of remand proceedings initiated by the Ld. CIT(A), the AO

again sent notice to M/s Kunal Gems so that the transactions could be verified. However, again the notice was returned un-served by the postal authorities with the remarks “not known”. Being faced with such a situation, the AO deputed the Inspector to conduct an inquiry and submit a report. The Inspector reported that no such person in the name of Mr. Ashok Soni, the Prop. of M/s Kunal Gems was staying in the address given by the AO.

In view of the above facts, the reliance placed by the Ld. counsel in the case of M/s Shri Laxmi Estate Pvt. Ltd. is misplaced.

In the 2nd ground of appeal, the assessee has contended that he was not provided with a copy of a statement recorded by the Investigation Wing from Shri Pravin Kumar Jain. Also it is contended that the assessee was not provided with an opportunity to cross examine Shri Jain, thus violating the principles of natural justice.

It is the duty of the assessee to file before the AO the correct address of the parties involved in a transaction, wherein disputed facts are being verified. In the instant case, the assessee has failed to file the correct address of the parties involved in such transactions.

A proper hearing must always include a fair opportunity to those who are parties in the controversy for correcting or contradicting anything prejudicial to their view. Cross-examination is allowed by procedural rules and evidently also by the rules of natural justice. Any witness who has been sworn on behalf of any party is liable to be cross-examined on behalf of the other party to the proceedings.

The Hon'ble Supreme Court in *State of Kerala vs. K.T. Shaduli Grocery Dealer* AIR 1977 SC 1627, recognised the importance of oral evidence by holding that the opportunity to prove the correctness or completeness of the return necessarily carry with it the right to examine witnesses and that includes equally the right to cross-examine witnesses.

In *ITO vs. M. Pirai Choodi* (2012) 20 taxmann.com 733 (SC), the Hon'ble Supreme Court has held that “Order of assessment passed without granting an opportunity to assessee to cross-examine, should not have been set aside by High Court; at most, High Court should have directed Assessing Officer to grant an opportunity to assessee to cross-examine concerned witness.”

In view of the above facts, we set aside the order of the Ld. CIT(A) and restore the matter to the file of the AO to make an order afresh in respect of the disputed amount of Rs.7,00,000/- treated as unexplained cash credit u/s 68 and Rs.1,30,783/- on account of interest paid on the above unsecured loan, after giving the related documents to the assessee and reasonable opportunity of being heard including cross-examination. We direct the assessee to file before the AO the correct address of the concerned parties and other related documents so as to facilitate the assessment proceedings.

8. In the result, the appeal is allowed for statistical purposes.

Order pronounced in the open Court on 27/12/2019.

Sd/-

Sd/-

(SAKTIJIT DEY)
JUDICIAL MEMBER

(N.K. PRADHAN)
ACCOUNTANT MEMBER

Mumbai;

Dated: 27/12/2019

Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai